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7
8 **BEFORE THE**
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**
10

11 In the Matter of the Accusation)	NO. 1B-90-176
12 Against:)	
13 FRANCIS FARHAD ATRY, DPM)	DEFAULT DECISION
14 1740 West Cameron #106)	
15 West Covina, CA 91790)	[Gov. Code §11520]
16 Podiatric License No. E-3660,)	
Respondent.)	

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18 **FINDINGS OF FACT**

- 19 1. On or about November 16, 1994, Complainant James
20 Rathlesberger, in his official capacity as Executive Officer of
21 the Board of Podiatric Medicine, Department of Consumer Affairs,
22 State of California, filed Accusation No. 1B-90-176 against
23 Francis Farhad Atry, DPM (hereinafter "respondent") before the
24 Board of Podiatric Medicine (hereinafter the "Board").
- 25 2. On or about November 16, 1994, Manny Estrella, an
26 employee of the State Department of Justice, sent by certified
27 mail a copy of Accusation No. 1B-90-176, Statement to Respondent,

1 Government Code sections 11507.5, 11507.6, and 11507.7, Notice of
2 Defense forms, and a Request for Discovery to respondent's
3 address of record with the Board which was and is 1740 West
4 Cameron #106, West Covina, CA 91790. On or about November 18,
5 1994, an individual from respondent's office signed the Domestic
6 Return Receipt. A copy of the Accusation, the pleading packet,
7 Declaration of Service and postal Return Receipt are attached
8 hereto as "Attachment A," and they are incorporated as if fully
9 set forth herein.

10 3. The above-described service was effective as a
11 matter of law pursuant to the provisions of California Government
12 Code section 11505, subdivision (c).

13 4. On July 1, 1990, the Board of Podiatric Medicine
14 issued Podiatric License No. E-3660 to respondent. At all times
15 relevant herein, that Podiatric License was in full force and
16 effect.

17 5. Business and Professions Code section 118 provides,
18 in pertinent part:

19 "(b) The suspension, expiration, or forfeiture by
20 operation of law of a license issued by a board in the
21 department, or its suspension, forfeiture, or cancellation
22 by order of the board or by order of a court of law, or its
23 surrender without the written consent of the board, shall
24 not, during any period in which it may be renewed, restored,
25 reissued, or reinstated, deprive the board of its authority
26 to institute or continue a disciplinary proceeding against
27 the licensee upon any ground provided by law or to enter an

1 order suspending or revoking the license or otherwise taking
2 disciplinary action against the license on any such ground."

3 6. Government Code section 11506 provides, in
4 pertinent part:

5 "(b) The respondent shall be entitled to a hearing on
6 the merits if he files a notice of defense, and any such
7 notice shall be deemed a specific denial of all parts of the
8 accusation not expressly admitted. Failure to file such
9 notice shall constitute a waiver of respondent's right to a
10 hearing, but the agency in its discretion may nevertheless
11 grant a hearing"

12 7. Respondent failed to file a Notice of Defense
13 within 15 days after service upon him of the Accusation and
14 therefore waived his right to a hearing on the merits of
15 Accusation No. 1B-90-176.

16 8. On or about March 8, 1995, a letter was sent to
17 respondent, at his address in West Covina, notifying him that his
18 Notice of Defense had not been received, even though it was due
19 in December, 1994. (See Attachment "B"). The Attorney General's
20 Office gave respondent a two-week period within which to return
21 another Notice of Defense. As of this date, our office has not
22 received respondent's Notice of Defense, or any other
23 communication from respondent.

24 9. Government Code section 11520 provides, in
25 pertinent part:

26 "(a) If the respondent fails to file a notice of
27 defense or to appear at the hearing, the agency may take

1 action based upon the respondent's express admissions or
2 upon other evidence and affidavits may be used as evidence
3 without any notice to respondent;"

4 10. Pursuant to its authority under Government Code
5 section 11520, the Board finds that the respondent is in default
6 and that he has waived his right to a hearing to contest the
7 allegations in Accusation No. 1B-90-176. The Board will take
8 action without further hearing and, based on the respondent's
9 admissions by way of default and the evidence before it, finds
10 that the allegations, and each of them, contained in Accusation
11 No. 1B-90-176 are true.

12 **DETERMINATION OF ISSUES**

13 1. Respondent Francis Farhad Atry, DPM has subjected
14 his Podiatric License to disciplinary action pursuant to section
15 2222 of the California Business and Professions Code by reason of
16 the Finding of Facts numbers 1 through 10, above.

17 2. Service of the Accusation and related documents
18 was proper and in accordance with the law.

19 3. The agency has jurisdiction to adjudicate this
20 case by default.

21
22 **ORDER OF THE**
23 **BOARD OF PODIATRIC MEDICINE**

24 Podiatric License number E-3660, heretofore issued to
25 respondent Francis Farhad Atry, DPM, is hereby revoked. An
26 effective date of August 10, 1995, has been assigned to this
27 Order.

1 Pursuant to Government Code section 11520, subdivision
2 (b), respondent is entitled to make any showing by way of
3 mitigation; however, such showing must be made in writing and
4 received by the Board at least five (5) days prior to the
5 effective date of this decision.

6 Made this 11th day of July, 1995.

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9 FOR THE BOARD OF PODIATRIC MEDICINE

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11 Attachments: A and B

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Attorneys for Complainant

BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

FRANCIS FARHAD ATRY, DPM
1740 West Cameron #106
West Covina, CA 91790
AKA FARHAD F. ATRZADEH, M.D.
Podiatric License No. E-3660,

Respondent.

NO. 1B-90-176

ACCUSATION

The Complainant alleges:

PARTIES

1. Complainant, James Rathlesberger, is the Executive Officer of the Board of Podiatric Medicine (hereinafter the "Board") and brings this accusation solely in his official capacity.

2. On or about July 1, 1990, Podiatric License No. E-3660 was issued by the Board to Francis Farhad Atry, DPM (hereinafter "respondent"), and at all times relevant to the charges brought herein, this license has been in full force and effect. Unless renewed, it will expire on April 30, 1996.

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A. Section 2222 of the Code provides that the Board may order the revocation, suspension, or other restriction of any podiatrist's certificate and incorporate the provisions of Section 2234 of the Code.

C. Section 2225(d) of the Code provides that when documents are requested from licensees by the Attorney General's Office, or Medical Board investigators, failure to produce the requested documents within the required deadline shall constitute unprofessional conduct.

E. Section 2052 of the Code provides that any person

1 who practices or advertises or holds himself out as
2 practicing, without having at the time a valid, unrevoked or
3 unsuspended certificate, is guilty of a misdemeanor.

4 F. Section 2497.5 of the Code provides, in part: (a)
5 The board may request the administrative law judge, under
6 his or her proposed decision in resolution of a disciplinary
7 proceeding before the board, to direct any licensee found
8 guilty of unprofessional conduct to pay to the board a sum
9 not to exceed the actual and reasonable costs of the
10 investigation and prosecution of the case.

11
12 FIRST CAUSE OF ACTION

13 (Failure to Provide Medical Records)

14 4. Respondent Francis Farhad Atry, D.P.M. is subject
15 to disciplinary action under sections 2225.5(a), and 2225(d) of
16 the Business and Professions Code in that respondent failed to
17 comply with a request for medical records of a patient. The
18 circumstances are as follows:

19 A. On or about January 14, 1994, the Board of
20 Podiatric Medicine sent respondent a letter requesting
21 the medical records of one of his patients. Respondent
22 was told he was not personally the subject of the
23 investigation.

24 B. On or about January 24, 1994, the Board
25 of Podiatric Medicine received a letter from respondent
26 stating his office required a fee of \$35 prior to
27 copying the medical records. Immediately thereafter,

1 respondent's office called the Board of Podiatric Medicine
2 demanding the \$35.

3 C. On or about February 8, 1994, the Board
4 of Podiatric Medicine sent respondent a letter
5 informing him that the Board does not pay fees in
6 advance of receiving medical records. Respondent was
7 given a deadline of February 21.

8 D. On or about February 17, respondent
9 called the Board of Podiatric Medicine and said the
10 Board would not get their records until respondent got
11 his money.

12 E. On or about April 7, 1994, an
13 investigator from the Board went to respondent's
14 office. The investigator gave respondent a copy of
15 Code section 2225.5, a copy of the signed medical
16 release, and told him he had until April 11, 1994 to
17 provide the Board with the patient records. Respondent
18 ordered the investigator to leave his office, and
19 failed to provide the records.

20 F. On or about April 13, 1994, the Medical
21 Board sent respondent a letter outlining his violations
22 and informing him the case would be referred to the
23 Attorney General's Office.

24
25 SECOND CAUSE OF ACTION

26 (Practicing Medicine Without a License)

27 5. Respondent Francis Farhad Atry, D.P.M. is subject

1 to disciplinary action under section 2052 of the Business and
2 Professions Code in that respondent practiced medicine without a
3 license. The circumstances are as follows:

4 A. Respondent was not licensed to practice
5 podiatry until July 1, 1990.

6 B. In approximately April, 1990, respondent
7 bought an office and practice from another doctor.

8 C. In or around the end of April, 1990,
9 respondent had a meeting with two of his office staff
10 to discuss their duties and salaries. Respondent told
11 them he would begin seeing patients May 1, 1990, which
12 was two months before respondent was officially
13 licensed.

14 D. In approximately May, 1990, respondent
15 performed foot surgery on a patient named Lupe R., and
16 he saw another patient named Lourdes P.

17 E. When respondent bought his practice, he
18 signed a Business License Application. At the bottom
19 of the form was a section entitled "Declaration of
20 Business Start Date", which asked respondent to put the
21 name of his business and when he intended to start the
22 business. Respondent signed under penalty of perjury
23 that his business, entitled "Farhad Atrzadeh, D.P.M."
24 was to begin June 1, 1990, one month before respondent
25 was licensed, and one month after he began the practice
26 of podiatric medicine on patients.

27 F. In March, 1991, respondent admitted to a

1 Medical Board investigator that he had hired two doctors in
2 April, 1990 to work at his clinic prior to receiving his
3 license.

4 G. Respondent received a citation from the
5 Board of Podiatric Medicine citing him for practicing
6 medicine without a license, and on January 13, 1994,
7 respondent was fined \$2500.

8 THIRD CAUSE OF ACTION

9 (Dishonest Acts)

10 6. Respondent Francis Farhad Atry, D.P.M. is subject
11 to disciplinary action under section 2234, subdivision (e) of the
12 Business and Professions Code in that respondent committed
13 dishonest and corrupt acts. The circumstances are as follows:

14 A. The facts as alleged in paragraph 5,
15 including all the subparagraphs therein, are
16 incorporated herein by reference.
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2 PRAYER

3 WHEREFORE, the complainant requests that a hearing be
4 held on the matters herein alleged, and that following the
5 hearing, the Board issue a decision:

6 1. Revoking or suspending Podiatric License Number
7 E-3660, heretofore issued to respondent Francis Farhad Atry, DPM;

8 2. Ordering respondent to pay the Board the actual
9 and reasonable costs of the investigation and enforcement of this
10 case;

11 3. Taking such other and further action as the Board
12 deems proper.

13 DATED: 11-16-94.

14
15 *James Rathlesberger*
16 _____
17 James Rathlesberger
18 Executive Officer
19 Board of Podiatric Medicine
20 Department of Consumer Affairs
21 State of California
22 Complainant

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